

ENTERED

January 08, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RICHARD SCOTT SHAFER,

Plaintiff,

VS.

LORIE DAVIS, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:20-CV-167

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Before the Court is Magistrate Judge Jason Libby's Memorandum and Recommendation (M&R). (D.E. 24). The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* U.S.C. § 636(b)(1); FED. R. Civ. P. 72(b); General Order No. 2002-13. Plaintiff timely filed objections to the M&R. (D.E. 28). Having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the M&R to which the Plaintiff's objections were directed, 28 U.S.C. § 636(b)(1), the Court **OVERRULES** Plaintiff's objections (D.E. 28). Accordingly:

(1) The Court **ADOPTS** the M&R in its entirety. (D.E. 24).

(2) The Court **ORDERS** that Plaintiff's (a) excessive force claims against **Sergeant Nestor S. Ochoa and Lieutenant Javier Muro** in their individual capacities, and (b) excessive force claim against **Warden Evelyn Castro** in her official capacity are **RETAINED**.

(3) The Court **ORDERS** that **TDCJ Director Lorie Davis, TDCJ Director of Chaplaincy Michael Rutledge, Head Chaplain Joseph Wright, Captain Skinner C. Sturgis, Captain Christi L. Garcia, Lieutenant Dorian B. Garza, Sergeant Rodolfo A. Garcia, and Sergeant Andrew H. Nino** are **DISMISSED without prejudice** from this action. The Clerk of Court is **DIRECTED** to **TERMINATE** those defendants from the docket sheet.

(4) The Court **ORDERS** that Plaintiff's claims for money damages against all individual defendants in their official capacities are **DISMISSED** as barred by the Eleventh Amendment.

(5) The Court **ORDERS** that Plaintiff's claims against the remaining Defendants—**Jeffrey Richardson, John R. Delapp Jr., Jessica Garcia, and A. Johnson**—are **DISMISSED with prejudice** for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). The Clerk of Court is **DIRECTED** to **TERMINATE** those defendants from the docket sheet.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
January 8, 2021